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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/667,989	09/22/2003	Denis Jolivet	13600	1946

7590 09/20/2005

ORUM & ROTH
53 W. JACKSON BLVD
CHICAGO, IL 60604

EXAMINER

PHAN, JAMES

ART UNIT	PAPER NUMBER
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2872

DATE MAILED: 09/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/667,989

Applicant(s)

JOLIVET

Examiner

James Phan

Art Unit

2872

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 June 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,4-11,14-17,19 and 21-49 is/are pending in the application.
- 4a) Of the above claim(s) 14-17 and 28-49 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1,4-7,11,22 and 23 is/are allowed.
- 6) ☒ Claim(s) 8-10,19 and 26 is/are rejected.
- 7) ☒ Claim(s) 21 and 27 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Election/Restrictions

Applicant's election without traverse of the species 3, Fig. 5, in the reply filed on 6/24/05 is acknowledged.

Applicant states that claims 14-17 and 24-25 are generic to the elected species 3. The examiner disagrees because the elected Fig. 5 does not disclose (1) the first reflector of the elected species being periodically oscillated and (2) at least some of the electromagnetic radiation is reflected onto and off a first fixed reflector and at least some of the electromagnetic radiation is reflected onto and off a first fixed reflector as recited in claim 14. Furthermore, the broadest claim 1 of the elected species does not include the features recited in claims 14 and thus, claim 14 and its dependent claims 15-17 and 24-25 are not generic to claim 1.

Claims 14-17, 24-25 and 28-49 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 8-10 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to

one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claims 8, 9 and 10 recite "wherein the movement of the first reflector is adapted to have a variable amplitude", "wherein the movement of the first reflector is adapted to have a variable frequency" and "wherein the movement of the first reflector is adapted to have a variable frequency and a variable amplitude", respectively. The specification does not describe how the first reflector depicted in Fig. 5 is adapted to have a variable frequency and/or a variable amplitude.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 19 and 26 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 10 and 11, respectively, of U.S. Patent No. 6,724,510. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claimed features of the instant application are disclosed in the patent claims.

Claims 21 and 27 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 1, 4-7, 11, 19 and 21-27 are allowable over the cited prior art.

The following is an examiner's statement of reasons for allowance: none of the cited references (see Form PTO-892), alone or in combination, teaches or suggests an optical apparatus including (1) a first reflector, a first fixed reflector and a second fixed reflector having functions and arrangement as specified in claim 1; and (2) a first reflector, and at least two secondary reflectors having functions and arrangement as specified in claim 19.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

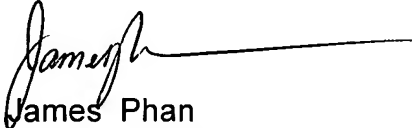
Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Each of Ubhayakar, Bean and Melville et al discloses an optical device having an oscillating mirror and a fixed mirror.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James Phan whose telephone number is (571) 272-2317. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Drew Dunn can be reached on (571) 272-2312. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


James Phan
Primary Examiner
Art Unit 2872